

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AMERICAN AUTOMOBILE)	
INSURANCE COMPANY,)	
a Missouri corp.,)	
)	
Plaintiff,)	
)	
vs.)	09 CV 01589
)	
BRIAN D. McCLURE &)	
ASSOCIATES, LTD.,)	
et al.,)	
)	
Defendants.)	

The deposition of BRIAN D. McCLURE,
called for examination, taken pursuant to the
Federal Rules of Civil Procedure of the United
States District Courts pertaining to the taking of
depositions, taken before THERESE M. SONNEMAKER,
CSR No. 84-2414, within and for the County of
Will, State of Illinois, and a Certified Shorthand
Reporter of said state, at 2067 Burlington Avenue,
Lisle, Illinois, on the 16th day of February, A.D.
2010, at 1:30 p.m.

Page 2	Page 4
<p>1 PRESENT:</p> <p>2 THE LAW FIRM OF HINSHAW & CULBERTSON,</p> <p>3 by:</p> <p>4 MR. DANA RICE,</p> <p>5 (222 North LaSalle Street</p> <p>6 Suite 300</p> <p>7 Chicago, IL 60601),</p> <p>8 on behalf of the Plaintiff;</p> <p>9</p> <p>10 THE LAW FIRM OF CONNELLY ROBERTS &</p> <p>11 MCGIVNEY LLC, by:</p> <p>12 MR. JEFFREY J. SCOLARO,</p> <p>13 (55 West Monroe Street</p> <p>14 Suite 1700</p> <p>15 Chicago, Illinois 60603),</p> <p>16 on behalf of the Deponent;</p> <p>17 THE LAW FIRM OF KAVANAGH GRUMLEY &</p> <p>18 GORBOLD, by:</p> <p>19 MR. ROBERT R. GORBOLD,</p> <p>20 (111 North Ottawa</p> <p>21 Joliet, IL 60432),</p> <p>22 on behalf of the Defendant, Genie</p> <p>23 Temporary Services.</p> <p>24</p>	<p>1 (Witness sworn.)</p> <p>2 MR. RICE: Mr. McClure, my name is Dana</p> <p>3 Rice. I represent American Automobile Insurance</p> <p>4 Company, the plaintiff, in the lawsuit, American</p> <p>5 Automobile Insurance Company versus McClure &</p> <p>6 Associates, case number 09 CV 1589.</p> <p>7 Let the record reflect this is the</p> <p>8 deposition of Brian D. McClure taken pursuant to</p> <p>9 notice and in accordance with the United States</p> <p>10 Federal Rules of Civil Procedure for the United</p> <p>11 States District Court.</p> <p>12 I am going to be asking you a series</p> <p>13 of questions today relating to the lawsuit. Just</p> <p>14 a few ground rules. Let me finish my question</p> <p>15 before you answer. That's for the benefit of the</p> <p>16 court reporter so she can take down the questions</p> <p>17 and answers completely. Let me finish my entire</p> <p>18 question before you answer. I know that sometimes</p> <p>19 during the course of a conversation you know</p> <p>20 exactly what I am asking. You know what answer</p> <p>21 you're going to give me. Just for the benefit of</p> <p>22 the court reporter it helps her take those down.</p> <p>23 It's also important to make all your</p> <p>24 responses verbally as opposed to nodding your</p>
Page 3	Page 5
<p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 BRIAN D. MCCLURE</p> <p>4 DX By MR. RICE Page 5, 90</p> <p>5 CX By MR. SCOLARO Page 86, 92</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 NAME MARKED FOR ID</p> <p>9 MCCLURE Deposition</p> <p>10 Exhibit</p> <p>11 Nos. 1-5 93</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 head. Again, the court reporter can only take</p> <p>2 down the spoken word.</p> <p>3 Again, if any of my questions you</p> <p>4 don't understand what I am asking, let me know.</p> <p>5 I'll be happy to rephrase or try to ask a better</p> <p>6 question.</p> <p>7 If you answer my question, I will</p> <p>8 assume you understood what it was I was asking for</p> <p>9 and that was your answer. Okay?</p> <p>10 Then at any time you want to take a</p> <p>11 break, use the restroom, fine by me. I will stop.</p> <p>12 BRIAN D. MCCLURE,</p> <p>13 called as a witness herein by the Plaintiff,</p> <p>14 having been first duly sworn, was examined upon</p> <p>15 oral interrogatories and testified as follows:</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. RICE:</p> <p>18 Q. Couple things at the outset, is there</p> <p>19 any medicine that you're taking that would prevent</p> <p>20 you from giving anything but complete and truthful</p> <p>21 answers to my questions today?</p> <p>22 A. No.</p> <p>23 Q. Did you review any documents in</p> <p>24 preparation for your deposition today?</p>

2 (Pages 2 to 5)

Page 6	Page 8
<p>1 A. No.</p> <p>2 Q. Have you spoken to anyone about your</p> <p>3 deposition today?</p> <p>4 A. Jeff came and told me, you know, we were</p> <p>5 going to be having a deposition. I have taken</p> <p>6 depositions before so --</p> <p>7 Q. That was, in fact, my other question.</p> <p>8 How many depositions have you given before?</p> <p>9 A. Probably four or five.</p> <p>10 Q. What kind of cases were those</p> <p>11 depositions in?</p> <p>12 A. Divorce.</p> <p>13 Q. Is that the only type of case?</p> <p>14 A. Yes.</p> <p>15 Q. I know your middle initial is D. What</p> <p>16 does that stand for?</p> <p>17 A. Donovan.</p> <p>18 Q. What is your date of birth, sir?</p> <p>19 A. 3/9/55.</p> <p>20 Q. Where do you currently live?</p> <p>21 A. 2248 Hidden Creek Court, Lisle,</p> <p>22 Illinois.</p> <p>23 Q. Sir, have you ever been convicted of a</p> <p>24 felony or a misdemeanor involving dishonesty?</p>	<p>1 A. In the State of Illinois, Minnesota,</p> <p>2 California, Indiana, North Carolina, South</p> <p>3 Carolina, Texas, Wisconsin, Indiana, Pennsylvania,</p> <p>4 and some various other states. I am really not</p> <p>5 sure off the top of my head.</p> <p>6 Q. With respect to the Illinois license,</p> <p>7 did you have to complete any education or training</p> <p>8 to get that license?</p> <p>9 A. Yes.</p> <p>10 Q. What did you have to do to obtain that</p> <p>11 license?</p> <p>12 A. I had to pass the agency's agent testing</p> <p>13 that took place back in the '80s and each year or</p> <p>14 every other year I have to do 30 hours of</p> <p>15 continuing education.</p> <p>16 Q. How long have you had your Illinois</p> <p>17 broker's license?</p> <p>18 A. I think since 1981.</p> <p>19 Q. Have you maintained that license</p> <p>20 consecutively at least through the years 2007,</p> <p>21 '08, and '09?</p> <p>22 A. Yes.</p> <p>23 Q. As part of your license, are you allowed</p> <p>24 to sell Worker's Compensation insurance?</p>
Page 7	Page 9
<p>1 A. No.</p> <p>2 Q. Where are you currently employed?</p> <p>3 A. B.D. McClure & Associates.</p> <p>4 Q. How long have you been employed there?</p> <p>5 A. Since I started the agency back in 1981.</p> <p>6 Q. What is your current job title within</p> <p>7 the company?</p> <p>8 A. I am the president.</p> <p>9 Q. Has the business been operating since</p> <p>10 1981?</p> <p>11 A. Yes.</p> <p>12 Q. What exactly do you do for the business?</p> <p>13 A. I am a representative. I am in charge</p> <p>14 of procuring contracts, agency contracts, with</p> <p>15 companies in helping our producers to sell</p> <p>16 business and to oversee the operations of the</p> <p>17 agency.</p> <p>18 Q. So would it be fair to say that you're</p> <p>19 responsible for the day-to-day operations of the</p> <p>20 company?</p> <p>21 A. Yes.</p> <p>22 Q. Are you a licensed insurance broker?</p> <p>23 A. Yes.</p> <p>24 Q. Where are you licensed?</p>	<p>1 A. Yes.</p> <p>2 Q. Generally describe to me the types of</p> <p>3 services B.D. McClure & Associates provides, just</p> <p>4 kind of an overview?</p> <p>5 A. B.D. McClure is the sales wing. We go</p> <p>6 out and do what any broker does. We sell</p> <p>7 premiums, you know, contracts with the insurance</p> <p>8 carriers guaranteeing claims will be paid for, you</p> <p>9 know, the policy period, which is a 365 day</p> <p>10 period.</p> <p>11 We take a look at -- premiums are</p> <p>12 typically based on losses, so we will take a look</p> <p>13 at claims of -- five-year claims history of where</p> <p>14 an insured was. We will determine where the</p> <p>15 frequency and severity is in a risk. We will</p> <p>16 determine how they can be -- best help themselves,</p> <p>17 whether that's by instituting post offer for</p> <p>18 higher work or testing for employees, post offer</p> <p>19 for prior testing or return to work programs for</p> <p>20 the Worker's Compensation to mitigate exposure to</p> <p>21 developing a medical provider that takes a look at</p> <p>22 the occupational risk, not the family medical type</p> <p>23 approach to claims, and really we do an entire</p> <p>24 educational process with our insureds allowing</p>

3 (Pages 6 to 9)

Page 10	Page 12
<p>1 them to understand that for every claims dollar</p> <p>2 that they will spend, it's going to cost them more</p> <p>3 money, so our goal is to mitigate exposure.</p> <p>4 Q. What types of insurance products do you</p> <p>5 sell to your clients?</p> <p>6 A. Worker's Compensation, general</p> <p>7 liability, property, auto, umbrellas,</p> <p>8 comprehensive commercial insurance packages or</p> <p>9 coverages, D & O coverage, professional liability.</p> <p>10 Q. Do you sell any homeowners insurance?</p> <p>11 A. We have one agent that does.</p> <p>12 Q. How many employees does McClure employ?</p> <p>13 A. Three.</p> <p>14 Q. What are their names?</p> <p>15 A. Barb Gast.</p> <p>16 Q. Is that G-a-s-t?</p> <p>17 A. G-a-s-t. Barb Burtelson,</p> <p>18 B-u-r-t-e-l-s-o-n. We just hired a new employee</p> <p>19 Tammy. I would have to go look at the last check</p> <p>20 to tell you her last name because we just hired</p> <p>21 her a couple weeks ago.</p> <p>22 Q. That's fine. Generally, could you</p> <p>23 please describe to me what each of those</p> <p>24 individuals do for McClure.</p>	<p>1 Investigations, two separately-owned companies,</p> <p>2 and we have a partnership agreement between those</p> <p>3 entities.</p> <p>4 Q. Is Brimar a general partner, or is B.D.</p> <p>5 McClure a general partner in the partnership, or</p> <p>6 do you know which one is which?</p> <p>7 A. There is no general partner.</p> <p>8 Q. Do you both have equal interest in the</p> <p>9 partnership?</p> <p>10 A. Yes.</p> <p>11 Q. First of all, you said Brimar is one of</p> <p>12 the partners in the partnership, correct?</p> <p>13 A. Brimar Investigations, Ltd is owned by</p> <p>14 Dave Ciarrachi. They are a partnership with B.D.</p> <p>15 McClure & Associates. It becomes McClure &</p> <p>16 Ciarrachi.</p> <p>17 B.D. McClure & Ciarrachi. That's a</p> <p>18 funnel account that we have.</p> <p>19 Q. What's the purpose of that partnership?</p> <p>20 A. Brimar is a claims administration and</p> <p>21 adjusting company, and B.D. McClure & Associates</p> <p>22 is an insurance agency.</p> <p>23 Q. Is Brimar and B.D. McClure the only two</p> <p>24 entities that are involved in that partnership?</p>
Page 11	Page 13
<p>1 A. Barb Gast is the bookkeeper in charge of</p> <p>2 the agency operations.</p> <p>3 Tammy is at the front desk. She</p> <p>4 answers the phone and is in charge of mail and in</p> <p>5 charge of learning other responsibilities in the</p> <p>6 agency.</p> <p>7 Barb Burtelson primarily works with</p> <p>8 claims.</p> <p>9 Q. How long has Barb Gast been with you?</p> <p>10 A. 17 years.</p> <p>11 Q. How about Barb Burtelson?</p> <p>12 A. 17 years.</p> <p>13 Q. And Tammy just recently?</p> <p>14 A. Just recently.</p> <p>15 Q. Would you say within the last year --</p> <p>16 how about the last six months?</p> <p>17 A. Last month.</p> <p>18 Q. Are you the sole owner of B.D. McClure &</p> <p>19 Associates?</p> <p>20 A. Yes.</p> <p>21 Q. Does anyone else have a financial</p> <p>22 condition in the business?</p> <p>23 A. No. B.D. McClure & Associates has a</p> <p>24 partnership arrangement with Brimar</p>	<p>1 A. Yes.</p> <p>2 Q. Is Brimar Investigations, Ltd Brimar</p> <p>3 Claims Administrative Company?</p> <p>4 A. Yes. Brimar Investigations, Ltd is the</p> <p>5 company. I don't know who Brimar Administration</p> <p>6 Claims Company is.</p> <p>7 Q. Have you ever heard of that company</p> <p>8 name?</p> <p>9 A. People maybe refer to it as that but --</p> <p>10 Q. To your knowledge, that's the correct</p> <p>11 legal entity name?</p> <p>12 A. No.</p> <p>13 Q. Who's your primary contact at Brimar?</p> <p>14 A. Dave Ciarrachi.</p> <p>15 Q. Did B.D. McClure & Associates work with</p> <p>16 Brimar in connection with any of the insurance</p> <p>17 produced or procured through AEG?</p> <p>18 A. I don't know that we work with Brimar.</p> <p>19 Brimar was handling some claims for AEG.</p> <p>20 Q. How long have you -- Brimar and McClure</p> <p>21 been partners?</p> <p>22 A. Since 1985.</p> <p>23 Q. Is that about how long you have known</p> <p>24 Ciarrachi?</p>

4 (Pages 10 to 13)

Page 14	Page 16
<p>1 A. No. I have known him longer than that.</p> <p>2 Q. Do you know how long you have known him?</p> <p>3 A. 1982, probably.</p> <p>4 Q. Mr. Ciarrachi does not have any</p> <p>5 financial ownership in McClure & Associates?</p> <p>6 A. No.</p> <p>7 Q. Obviously, the purpose of this lawsuit</p> <p>8 deals with the insurance produced through AEG.</p> <p>9 You're familiar with that, correct?</p> <p>10 A. Yes.</p> <p>11 Q. When did McClure start offering</p> <p>12 insurance products for AEG? Whenever I say AIG, I</p> <p>13 mean AEG. It's simply a slip-up.</p> <p>14 MR. SCOLARO: Can you repeat the</p> <p>15 question?</p> <p>16 BY MR. RICE:</p> <p>17 Q. When did you start soliciting or</p> <p>18 offering for sale Worker's Comp insurance offered</p> <p>19 or administered by AEG?</p> <p>20 A. In late 2005.</p> <p>21 Q. How long do you think you sold AEG</p> <p>22 products?</p> <p>23 A. Repeat that question.</p> <p>24 Q. You started in about late 2005. How</p>	<p>1 paying them premium too.</p> <p>2 Q. You had said you brought in Dallas</p> <p>3 National. Who's that?</p> <p>4 A. Dallas National is a B-plus rated</p> <p>5 carrier from Dallas, Texas.</p> <p>6 Q. When you say you brought them in, you</p> <p>7 brought them in to fill the void for offering</p> <p>8 Worker's Compensation insurance policies?</p> <p>9 A. We actually had a meeting in Springfield</p> <p>10 with Eddie McCreety (Phonetic), the Department of</p> <p>11 Insurance. We brought them in at that time. We</p> <p>12 got -- They were not licensed in the State of</p> <p>13 Illinois. We got them approved within five or</p> <p>14 six days. They agreed to take over all of the</p> <p>15 accounts that we had written through AEG as of</p> <p>16 December 25, 2007.</p> <p>17 Q. When you say they were willing to take</p> <p>18 them over, do you mean that they would start a new</p> <p>19 policy term with the inception of the date when</p> <p>20 the AEG policy expired?</p> <p>21 A. No. As of July 25, 2007 they started</p> <p>22 writing the insurance through to the expiration</p> <p>23 date, and then they would renew it.</p> <p>24 Q. So they were not going to take over or</p>
Page 15	Page 17
<p>1 long did you sell insurance administered with</p> <p>2 AEG?</p> <p>3 A. We sold the products until we discovered</p> <p>4 that there may be a problem with the AEG program,</p> <p>5 which was -- I believe it was in 2007, the first</p> <p>6 part of the year in 2007, maybe May of 2007,</p> <p>7 something like that, if my memory serves me</p> <p>8 correctly.</p> <p>9 Q. I believe -- Are you aware that McClure</p> <p>10 has filed a counterclaim against American</p> <p>11 Automobile in the federal lawsuit? Are you aware</p> <p>12 of that?</p> <p>13 A. Yes.</p> <p>14 Q. I believe in your counterclaim you had</p> <p>15 indicated that you had sold the product up until</p> <p>16 about July of 2007. Does that sound accurate?</p> <p>17 A. No, because in July of 2007 was when we</p> <p>18 brought Dallas National on board, July 25th of</p> <p>19 '07, to be specific, to take over all the</p> <p>20 accounts. I believe that AEG was liquidated a</p> <p>21 month before, two months before, probably a month</p> <p>22 before. Sometime in July they were liquidated.</p> <p>23 There was no company, and we stopped selling</p> <p>24 through AEG quite sometime before and stopped</p>	<p>1 assume the liability that AEG had prior to July</p> <p>2 25th of '07?</p> <p>3 A. No.</p> <p>4 Q. Did you have any contacts at AEG</p> <p>5 directly?</p> <p>6 A. Just with Mike Ward.</p> <p>7 Q. Who's Mike Ward?</p> <p>8 A. Mike Ward was the president and CEO of</p> <p>9 AEG.</p> <p>10 Q. How did you meet Mr. Ward?</p> <p>11 A. He was introduced to me by two of the</p> <p>12 producers that work here that were handling claims</p> <p>13 for AEG.</p> <p>14 Q. When you say "work here," where?</p> <p>15 A. They work -- They are independent</p> <p>16 producers that work with McClure & Associates.</p> <p>17 Q. About how many different insurance</p> <p>18 companies do you write business for?</p> <p>19 A. Seven.</p> <p>20 Q. Are you captive agents for those</p> <p>21 insurance companies?</p> <p>22 A. I am not sure what you mean by captive</p> <p>23 agents.</p> <p>24 Q. Are you the only agent that is allowed</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 to write business for that particular insurance 2 company in Illinois? 3 A. No. 4 Q. Are you able to obviously then write not 5 only for that insurance company but the six other 6 ones you represent? 7 A. Yes. 8 Q. So your agency agreements, do you have 9 agency agreements with all of these insurers? 10 A. Yes. 11 Q. These agreements are obviously to write 12 policies for other insurers also? 13 A. Yes. 14 Q. Did you have an agency agreement with 15 AEG? 16 A. Verbal. 17 Q. Verbal agreement? Was that agreement 18 directly with AEG? I believe there is another 19 company, Reinsurance Company of America. First of 20 all, was the agreement with AEG verbally? 21 A. Yes. 22 Q. Did you have a separate agreement with 23 RCA? 24 A. I actually had a contract with RCA at</p>	<p style="text-align: right;">Page 20</p> <p>1 you place business with with AEG? 2 A. You know, I don't have the list in front 3 of me. I don't know whether it was 15 or 20, 30 4 clients. I am not sure how many. 5 Q. Do you have a list of those clients? 6 A. There is a list somewhere of the exact 7 numbers of clients, yes. 8 Q. Who would have that list? 9 A. Barb Gast would probably have that. 10 MR. RICE: I think we had asked for that 11 before in the course of discovery, so I will make 12 a request on the record. If you could work with 13 Brian to try to get a copy of that list, that 14 would be helpful. 15 MR. SCOLARO: Sure. 16 Take a break for a second. 17 MR. RICE: Sure, no problem. 18 (Break had.) 19 BY MR. RICE: 20 Q. For purposes of our discussion here, I 21 think in your counterclaim against American 22 Automobile the number was 25, approximately 25, so 23 we will use that figure. That certainly fits 24 within the range you gave us.</p>
<p style="text-align: right;">Page 19</p> <p>1 one point. 2 Q. I think the dates we kind of talked 3 about, earlier date 2005 to May-ish, June-ish of 4 2007. Is it fair to say that was 29-year window, 5 approximating, that you sold AEG insurance? 6 A. Give me the approximate window again. 7 Q. I believe we used late 2005 is when you 8 first started the business? 9 A. Correct. 10 Q. You stopped mid-2007, certainly sometime 11 before July? 12 A. It was before May, I think. We stopped 13 selling for AEG, and I can't remember the exact 14 date, but I could find by the last account that I 15 wrote with them because when I did figure that I 16 had a problem with AEG maybe taking money, I paid 17 \$5000 to a consultant through my law firm to get a 18 meeting with a director of insurance, told him 19 that I thought we had a big problem. 20 Q. Again for purposes of this discussion, 21 I'm just going to refer to it as a two-year window 22 of time that you sold insurance for them, maybe a 23 little less. I understand that. During that 24 time period, approximately how many clients did</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Right. 2 Q. Let's assume for the sake of argument 3 it's 25 clients. It's fair to say that all 25 of 4 those clients' business were written during that 5 same two-year time period we talked about earlier, 6 correct? 7 A. Yes. 8 Q. Approximately how many of those clients 9 were transferred over to Dallas National? 10 A. 100 percent. 11 Q. Did you know if any of those or all of 12 those clients are still clients of Dallas 13 National? 14 A. There are a couple clients that are no 15 longer with Dallas National, that I know of. 16 Q. Now, during that two-year window you 17 were selling AEG Insurance, did you ever sell any 18 other Worker's Compensation policies offered from 19 different carriers? 20 A. Yes. 21 Q. Approximately how many other carriers 22 did you work with? I think you said seven offered 23 Worker's Comp policies? 24 A. All seven of them, probably.</p>

6 (Pages 18 to 21)

Page 22	Page 24
<p>1 Q. Aside from the 25 or so clients you 2 placed with AEG, did you have other clients from 3 McClure that placed Worker's Comp business with 4 other insurer?</p> <p>5 A. Yes.</p> <p>6 Q. Just generally, when did you decide to 7 place insurance with AEG perhaps versus another 8 carrier that you were also servicing?</p> <p>9 MR. SCOLARO: Objection. Form, but you 10 can answer the question if you understand it. 11 BY MR. RICE:</p> <p>12 Q. I can try to rephrase the question if 13 you would like.</p> <p>14 A. Please rephrase.</p> <p>15 Q. If a client came to you and said, "I 16 want to purchase Worker's Compensation insurance," 17 could you describe to me the process you would go 18 by -- you would use to decide which carrier to 19 place that business with?</p> <p>20 A. We take a look at the risk. We see what 21 the risk tolerance was of the carriers. If it was 22 something that was up AEG's alley -- because 23 certain carriers have tolerance for different 24 types of risks, and we place it based on the risk</p>	<p>1 was, I think, an A minus or an A. They had been 2 around for 25 years, and we were familiar with 3 them because we had a contract with them. With 4 Mike Ward he could sell some things that RCA 5 wouldn't write for us because of his million 6 dollars doubling the plan that he had with them.</p> <p>7 He paid the claims; and that he had a 8 15 percent loss ratio with them, and so we did all 9 the due diligence that you would on any company. 10 It was the first PEO that we had ever heard of, 11 but we understood the concept of reinsurance. We 12 knew that if anything happened to AEG that RCA was 13 on the policy.</p> <p>14 Q. Did you understand RCA to be on the 15 policy after the million dollars was expended by 16 AEG or they would drop down to cover the AEG?</p> <p>17 A. They would drop down if anything 18 happened to AEG. That's the way that policy works.</p> <p>19 Q. You said at that time did you also have 20 that contract with RCA?</p> <p>21 A. Yes.</p> <p>22 Q. The separate agreement between McClure 23 and RCA?</p> <p>24 A. Yes.</p>
Page 23	Page 25
<p>1 tolerance of the carrier.</p> <p>2 Q. Do you know whether AEG had a typical 3 type of risk that they would insure?</p> <p>4 A. They insured tougher types of risks.</p> <p>5 Q. By "tougher" what do you mean?</p> <p>6 A. We insured taxi cabs in the City of 7 Chicago. We insured fire districts. We still 8 have those programs. They are very profitable.</p> <p>9 Q. When you were introduced to AEG back in 10 late 2005, did you perform any investigation into 11 the company generally just to learn about them?</p> <p>12 A. Yes, we did.</p> <p>13 Q. What type of investigation did you do?</p> <p>14 A. First thing we did we asked for a copy 15 of their agreement with RCA. We found out that 16 RCA was the reinsurance carrier. We saw that 17 they had a million dollar deductible. They paid 18 the first million dollars.</p> <p>19 We contacted the Department of 20 Insurance. We asked them if AEG had ever been in 21 trouble with the Department of Insurance as a 22 licensed PEO for not paying claims.</p> <p>23 We looked at the Reinsurance 24 Corporation of America rating and found that it</p>	<p>1 Q. What did that agreement entail?</p> <p>2 A. That was an agency contract direct.</p> <p>3 Q. So that allowed you to write business 4 for RCA directly?</p> <p>5 A. Yes. We had originally found RCA 6 through a MGA, managing general agent, named 7 American Patriot. They are a large writer of 8 roofing business, and the now president of that 9 organization, Mike Shook, came in, one of our 10 agents brought him in, and he told us that he 11 represented a market that could write tougher 12 classes of business, so we started writing through 13 them.</p> <p>14 Ultimately within maybe six or seven 15 months RCA closed that agency down. RCA came to 16 us because we had the most profitable business 17 that we had written in Illinois and asked us if we 18 wanted to have a contract, and we said yes. So 19 we developed a contract with them at that time.</p> <p>20 Q. So your relationship with RCA was 21 separate and distinct prior to learning about 22 AEG's business?</p> <p>23 A. Exactly.</p> <p>24 Q. So it was just by happenstance that RCA</p>

7 (Pages 22 to 25)

Page 26	Page 28
<p>1 actually reinsured AEG at the time you learned 2 about AEG?</p> <p>3 A. That's how we first heard of the 4 whole -- right. Ward happened in here. Two of 5 the guys that used to work for Freemont Insurance 6 Company who had been in claims who are producers 7 now were handling claims. They had Mike Ward as a 8 risk manager of a large staffing company that they 9 wanted to quote on when warned them that he owned 10 this PEO. He was a consultant in the staffing 11 company. If they would handle some claims, he 12 would get involved in, quote, that insurance and 13 that was how Mike Ward even got in the door. 14 Ultimately it was everyone coming to me saying 15 Mike said he could do it, so I sat down and 16 listened to what he had to say.</p> <p>17 Q. I think you had mentioned that one of 18 your agents had introduced you to RCA?</p> <p>19 A. Yes, one of the agents had introduced us 20 to Mike Shook, the MGA, who ultimately represented 21 RCA in Illinois, and so we would go through 22 American Patriot to place insurance, and we did 23 place insurance through that MGA. We didn't do it 24 directly at first.</p>	<p>1 A. No.</p> <p>2 Q. You had indicated that AEG was your 3 first experience with the PEO?</p> <p>4 A. Yes.</p> <p>5 Q. None of the other insurance companies 6 you currently work for are PEOs, correct?</p> <p>7 A. No.</p> <p>8 Q. When you sold insurance to any of the 25 9 clients through AEG, were they aware this was a 10 PEO or traditional insurance company?</p> <p>11 A. Yes, except the State of Illinois allows 12 for a PEO to sell just single line items. They 13 can break out Worker's Compensation, so while they 14 were familiar with it, PEO through RCA, RCA was 15 the carrier. It was a stand alone Worker's 16 Compensation program with their own certificates 17 directly from RCA, so RCA was the carrier.</p> <p>18 Q. I am going to show you what's been 19 marked as Exhibit No. 1 for your deposition. If 20 you take a second just to flip through that, do 21 you recognize that document?</p> <p>22 A. No.</p> <p>23 Q. If you take a look at Pages 8 and 10 of 24 the actual document, not the numbers in the bottom</p>
Page 27	Page 29
<p>1 Q. How many agents would you say you work 2 with to solicit business for McClure?</p> <p>3 A. Seven.</p> <p>4 Q. Where are those agents located? Are 5 they all over?</p> <p>6 A. Right here.</p> <p>7 Q. When you say "right here," they are 8 physically out of this office?</p> <p>9 A. Uh-huh.</p> <p>10 Q. They are not employees of McClure & 11 Associates?</p> <p>12 A. No.</p> <p>13 Q. You have separate agreements with each 14 one of them?</p> <p>15 A. Yes.</p> <p>16 Q. Are those written contract agreements?</p> <p>17 A. Yes.</p> <p>18 Q. Are those renewed annually, or are they 19 just ongoing until you terminate them?</p> <p>20 A. Ongoing until terminate, either way.</p> <p>21 Q. Do those agents exclusively work with 22 McClure & Associates?</p> <p>23 A. No.</p> <p>24 Q. So they don't work with any brokers?</p>	<p>1 right-hand corner, is that your signature on those 2 documents?</p> <p>3 A. Yes.</p> <p>4 Q. I believe this to be the agency 5 agreement you were referring to between McClure & 6 Associates and American Automobile Insurance 7 Company of America. Do you believe that to be 8 true?</p> <p>9 A. Yes. It looks like the agency 10 agreement.</p> <p>11 Q. We had talked previously McClure & 12 Associates written as an agency that agreement 13 with RCA. Is this that agreement?</p> <p>14 MR. SCOLARO: It calls for a legal 15 conclusion. To the extent he has to read through 16 the whole thing and see if, in fact, it's the same 17 one that was his, but he can answer to the extent 18 he recognizes it as that document.</p> <p>19 THE WITNESS: What was the question?</p> <p>20 BY MR. RICE:</p> <p>21 Q. I am just curious to know whether this 22 is the agreement you were referring to earlier 23 between McClure & Associates and RCA?</p> <p>24 A. It looks like it.</p>

8 (Pages 26 to 29)

Page 30	Page 32
<p>1 Q. Can McClure & Associates execute any</p> <p>2 other agreements with RCA other than the one you</p> <p>3 had mentioned before?</p> <p>4 A. No.</p> <p>5 Q. Is this agreement still in effect</p> <p>6 between McClure & Associates and RCA?</p> <p>7 A. No.</p> <p>8 Q. When did you terminate your relationship</p> <p>9 with RCA?</p> <p>10 A. I don't recall when.</p> <p>11 Q. Was it after the AEG liquidation?</p> <p>12 A. Before.</p> <p>13 Q. At any point were you selling AEG</p> <p>14 insurance?</p> <p>15 MR. SCOLARO: Objection. Form. To the</p> <p>16 extent you understand the question, go ahead and</p> <p>17 answer.</p> <p>18 MR. RICE: I haven't even finished my</p> <p>19 question.</p> <p>20 MR. SCOLARO: I thought you were done.</p> <p>21 MR. RICE: I was trying to look for the</p> <p>22 words.</p> <p>23 MR. SCOLARO: All right.</p> <p>24</p>	<p>1 rating?</p> <p>2 A. Yes.</p> <p>3 Q. What was their rating at that time?</p> <p>4 A. It was an A minus or better.</p> <p>5 Q. How did you determine that?</p> <p>6 A. By looking at the internet and looking</p> <p>7 at Best.</p> <p>8 Q. So you used Best Internet Guide?</p> <p>9 A. Correct.</p> <p>10 Q. You don't have the physical books</p> <p>11 themselves?</p> <p>12 A. No.</p> <p>13 Q. Would you have checked that rating in</p> <p>14 2005, late 2005, when AEG was presented to you as</p> <p>15 a potential insurer?</p> <p>16 A. We did before, yes, before we ever</p> <p>17 started selling, yes.</p> <p>18 Q. So just I am clear, you would have</p> <p>19 checked RCA's rating prior to selling any AEG</p> <p>20 insurance?</p> <p>21 A. Yes.</p> <p>22 Q. Did you continually check RCA's rating</p> <p>23 during the course of that two-year period you were</p> <p>24 selling AEG insurance?</p>
Page 31	Page 33
<p>1 BY MR. RICE:</p> <p>2 Q. Are you still selling AEG insurance</p> <p>3 after you terminated your relationship with RCA?</p> <p>4 A. I never terminated my association with</p> <p>5 RCA.</p> <p>6 Q. Did RCA terminate the relationship with</p> <p>7 McClure & Associates?</p> <p>8 A. Yes, they did.</p> <p>9 Q. Do you know why they did that?</p> <p>10 A. They were in a lawsuit with AEG, they</p> <p>11 told me.</p> <p>12 Q. Did they give you any indication that</p> <p>13 their decision to terminate the relationship with</p> <p>14 you had anything to do with what McClure &</p> <p>15 Associates was doing with respect to their</p> <p>16 products?</p> <p>17 A. No. They said it all had to do with the</p> <p>18 legal battle they were in with AEG over coverage</p> <p>19 and premiums.</p> <p>20 Q. Because AEG was a PEO; they have A best</p> <p>21 rating?</p> <p>22 A. No.</p> <p>23 Q. You indicated that when you're</p> <p>24 investigating AEG, you did locate RCA AM best</p>	<p>1 A. I don't continually check any carrier's</p> <p>2 rating.</p> <p>3 Q. So is it fair to say that you checked</p> <p>4 the first time at the inception of your selling</p> <p>5 these insurance policies?</p> <p>6 A. I checked several times, but I don't</p> <p>7 essentially do it on a habitual basis.</p> <p>8 Q. Do you do it once a year?</p> <p>9 A. From time to time. We might do it twice</p> <p>10 a year.</p> <p>11 Q. What would provoke you to check it?</p> <p>12 A. When our insured's asking me what our</p> <p>13 rating was.</p> <p>14 Q. It's not as though every six months to</p> <p>15 check just to check?</p> <p>16 A. No.</p> <p>17 Q. Do you print off the rating when you</p> <p>18 check?</p> <p>19 A. Yes.</p> <p>20 Q. Did you do that in this instance?</p> <p>21 A. Yes.</p> <p>22 Q. Where would you store that rating</p> <p>23 printout?</p> <p>24 A. We would give it to the insured.</p>

Page 34	Page 36
<p>1 Q. Do each of the 25 clients that you place</p> <p>2 the AEG -- Strike that.</p> <p>3 Does McClure keep a file for each of</p> <p>4 its clients?</p> <p>5 A. Yes.</p> <p>6 Q. Is that also true for the 25 clients you</p> <p>7 placed with AEG?</p> <p>8 A. Yes.</p> <p>9 Q. Do you still have those files?</p> <p>10 A. I would guess.</p> <p>11 Q. Is that something you can check?</p> <p>12 A. I would have to see if they were purged</p> <p>13 by our office manager or not back in '05. I</p> <p>14 don't know.</p> <p>15 Q. Are any of the 25 clients that you</p> <p>16 placed with AEG still clients of the company?</p> <p>17 A. Yes.</p> <p>18 Q. Do clients have one file per client or</p> <p>19 multiple files depending on what types of</p> <p>20 insurance they have?</p> <p>21 A. Multiple files for each year for each</p> <p>22 line of coverage.</p> <p>23 Q. What is your document retention policy?</p> <p>24 A. Typically, four years.</p>	<p>1 A. Typically we don't keep that information</p> <p>2 because it changes.</p> <p>3 Q. What do you mean by "it changes"?</p> <p>4 A. The claims loss runs.</p> <p>5 Q. So if --</p> <p>6 A. Claims are handled by insurance</p> <p>7 carriers.</p> <p>8 Q. If someone were to report a claim, is it</p> <p>9 possible that they might call McClure & Associates</p> <p>10 first?</p> <p>11 A. Yes.</p> <p>12 Q. If that would happen, what would you do?</p> <p>13 A. Report it to the carrier.</p> <p>14 Q. Then would it be the intention that the</p> <p>15 carrier would pick up from that point and handle</p> <p>16 the administration of the claims?</p> <p>17 A. Depends. Administering the claim.</p> <p>18 Q. Did you, McClure & Associates,</p> <p>19 administer a lot of claims back in 2005 through</p> <p>20 2007?</p> <p>21 A. McClure & Associates never has</p> <p>22 administered a claim.</p> <p>23 Q. Do you do that today?</p> <p>24 A. McClure & Associates doesn't do that.</p>
Page 35	Page 37
<p>1 Q. Do you have one in writing, or is it</p> <p>2 your document retention program in writing?</p> <p>3 A. No.</p> <p>4 Q. To the extent that all of the 25 clients</p> <p>5 that you placed with AEG are still clients, you</p> <p>6 will have a file for them in some capacity or</p> <p>7 other?</p> <p>8 A. Correct.</p> <p>9 Q. It becomes a matter of whether or not</p> <p>10 the information back in 2005 is still in the file?</p> <p>11 A. Right.</p> <p>12 Q. Do you keep any electronic copies of</p> <p>13 your files?</p> <p>14 A. No.</p> <p>15 Q. Is any portion of the file kept</p> <p>16 electronically?</p> <p>17 A. No, other than billing.</p> <p>18 Q. What goes into a client's file here at</p> <p>19 McClure & Associates?</p> <p>20 A. Typically policies, underwriting.</p> <p>21 Q. How about correspondences between the</p> <p>22 client and McClure & Associates?</p> <p>23 A. If it's pertinent. Additions, deletions.</p> <p>24 Q. How about documents relating to claims?</p>	<p>1 Q. Who does?</p> <p>2 A. Brimar.</p> <p>3 Q. Do you know whether Brimar maintains</p> <p>4 claims information for claims made by McClure &</p> <p>5 Associates clients?</p> <p>6 A. What dates?</p> <p>7 Q. Well, currently.</p> <p>8 A. If it's controlled by Brimar or</p> <p>9 controlled by the insurance company?</p> <p>10 Q. We will do both. Are there situations</p> <p>11 where Brimar acts as the claims administrator for</p> <p>12 a claim for an insurance company?</p> <p>13 A. Yes.</p> <p>14 Q. Are there certain carriers that Brimar</p> <p>15 simply is a conduit between McClure & Associates</p> <p>16 and the insurer?</p> <p>17 A. Yes.</p> <p>18 Q. In those latter instances the insurance</p> <p>19 company would administer the claim?</p> <p>20 A. Correct.</p> <p>21 Q. In those instances where Brimar is</p> <p>22 acting as the claims administrator, do you believe</p> <p>23 that they have claims files for those claims?</p> <p>24 A. Yes.</p>

10 (Pages 34 to 37)

Page 38	Page 40
<p>1 Q. Do you believe that that was the policy 2 back in 2005 through 2007? 3 A. Yes. 4 Q. Did Brimar act as a claims administrator 5 for claims made involving AEG insurance policies? 6 A. Yes. 7 Q. Do you believe that they maintain claims 8 files for those claims? 9 A. Yes. 10 Q. Do you have copies of their claims 11 files? 12 A. Yes. 13 Q. Are those stored here at your office? 14 A. Yes. 15 Q. Because AEG was a PEO did you ever 16 expect the Illinois Guarantee Fund would step in 17 in the event AEG became insolvent? 18 A. Yes. 19 Q. Why do you believe that? 20 A. RCA is a licensed carrier in good 21 standing with the State of Illinois. 22 Q. You believe that the Guaranteed Fund 23 would step in despite the fact that AEG was 24 responsible for the first million dollars of</p>	<p>1 Q. Could you describe to me what you 2 learned back then? 3 A. There was an investigator that came in 4 from the Department of Insurance Consultant, and 5 he was taking a look at RCA. 6 Q. What was he investigating or she 7 investigating? 8 A. He was investigating James Kernan, the 9 President and CEO of RCA. 10 Q. Did you have a discussion with the 11 investigator about RCA? 12 A. Tried to. 13 Q. What do you mean you "tried to"? 14 A. He wasn't too cooperative. He was more 15 interested in gaining information. 16 Q. So he asked a lot of questions but 17 wouldn't give a lot of answers, is that fair? 18 A. Correct. 19 Q. Did the investigator come here just that 20 one time? 21 A. Yes. 22 Q. Do you recall when approximately that 23 was? 24 A. It was in '07. I contacted my</p>
Page 39	Page 41
<p>1 coverage directly? 2 A. Absolutely. 3 Q. Have you ever spoke to the Guarantee 4 Fund about these claims? 5 A. Not personally. 6 Q. Has the guaranteed fund ever written you 7 any correspondence to indicate that they do not 8 insure or will not step down in light of the AEG 9 insolvency? 10 A. I don't recall receiving anything from 11 the Guarantee Fund. 12 Q. Do you know whether AEG participated in 13 the Guarantee Fund? 14 A. I don't know. 15 Q. Did you ever investigate that? 16 A. I never thought about it. 17 Q. Do you know whether RCA participated in 18 the Guarantee Fund? 19 A. Yes, they do. 20 Q. We talked back -- I think you had 21 mentioned again May, June of '07 you became aware 22 that there was a big problem with AEG, correct? 23 A. Uh-huh. Actually, it wasn't with AEG. 24 It was RCA.</p>	<p>1 attorney. He came in. Took over from there. 2 Q. When the investigator came to your 3 office and advised you that they were 4 investigating RCA, why did that concern you with 5 respect to AEG? 6 A. Because he told us that there was 7 potential for fraud between RCA and a number of 8 companies that they had sold deductible policies 9 or alleged they they sold deductible policies that 10 they hadn't filed for. 11 Q. Your concern was AEG may fall into that 12 category of policies that were assumed in this 13 potential fraud? 14 A. Yes. 15 Q. Again, do you recall approximately the 16 month? 17 A. Sometime in '07. 18 Q. First half of '07? 19 A. First half of '07. 20 Q. Are you aware that the Department of 21 Insurance had issued a cease and desist order with 22 respect to the placement of insurance with AEG? 23 A. They did that directly -- gave it 24 directly to me. I actually was instrumental in</p>

11 (Pages 38 to 41)

Page 42	Page 44
<p>1 getting that done because I brought that to the</p> <p>2 Department of Insurance's attention when I found</p> <p>3 out that there was a problem potentially with RCA.</p> <p>4 Q. I believe that order was entered on July</p> <p>5 5th of 2007. Does that sound accurate to you?</p> <p>6 A. Yes.</p> <p>7 Q. Is it fair to say that the investigator</p> <p>8 you spoke about or spoke with concerning RCA, that</p> <p>9 conversation took place before the cease and</p> <p>10 desist order was entered?</p> <p>11 A. Months before.</p> <p>12 Q. So going back to the question of when</p> <p>13 did that investigator come out and speak with you,</p> <p>14 it's probably sometime in May and June of '07?</p> <p>15 MR. SCOLARO: Objection. Asked and</p> <p>16 answered, but to the extent --</p> <p>17 THE WITNESS: Sometime in the first half</p> <p>18 of the year. It was months before because -- and</p> <p>19 the reason I have told you that, I didn't pay -- I</p> <p>20 stopped writing insurance with AEG because I set</p> <p>21 the meeting with the Department of Insurance to</p> <p>22 tell them that I thought there was a problem, and</p> <p>23 then we ended up keeping \$1.3 million in the</p> <p>24 premium trust fund, not sending the money out.</p>	<p>1 A. Correct.</p> <p>2 Q. Would that list also contain when those</p> <p>3 policies were issued?</p> <p>4 A. Yes.</p> <p>5 Q. I am showing you what's been marked as</p> <p>6 Exhibit 2 for your deposition. Could you take a</p> <p>7 moment to look that over?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Let me know when you're finished. Do</p> <p>10 you recognize this letter?</p> <p>11 A. Yes.</p> <p>12 Q. Did you receive this letter?</p> <p>13 A. Yes.</p> <p>14 Q. When approximately did you receive it?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you recognize the signature at the</p> <p>17 bottom of the letter?</p> <p>18 A. It says Michael Ward, but I don't know</p> <p>19 if that's his signature or not because I don't</p> <p>20 know what his signature looks like.</p> <p>21 Q. I notice this letter isn't addressed or</p> <p>22 dated. Do you know whom this letter was sent to?</p> <p>23 A. No.</p> <p>24 Q. You do know, however, you got a copy of</p>
Page 43	Page 45
<p>1 The statement the Department of</p> <p>2 Insurance was telling us to use some of those</p> <p>3 funds to pay the claims, ongoing claims, that we</p> <p>4 had. Inside all of this -- I can't remember the</p> <p>5 time frames -- but the Department of Insurance was</p> <p>6 well aware of what was going on. They knew we had</p> <p>7 the money. They would approve payments to</p> <p>8 claimant's ongoing until they stopped that and</p> <p>9 said hold the money, and then they took the money</p> <p>10 after the liquidation.</p> <p>11 BY MR. RICE:</p> <p>12 Q. From the time in which you met with the</p> <p>13 investigator until the time the cease and desist</p> <p>14 order was entered, did you issue any AEG insurance</p> <p>15 policies during that time period?</p> <p>16 MR. GORBOLD: Could I hear that question</p> <p>17 again?</p> <p>18 (Record read.)</p> <p>19 THE WITNESS: To the best of my</p> <p>20 knowledge, no.</p> <p>21 BY MR. RICE:</p> <p>22 Q. I believe you indicate earlier that you</p> <p>23 have or could create a list of clients whom you</p> <p>24 issued AEG insurance with, correct?</p>	<p>1 it?</p> <p>2 A. I don't know if I did or didn't.</p> <p>3 Q. So you don't have any idea what time</p> <p>4 frame you would have received it?</p> <p>5 A. No.</p> <p>6 Q. Of the 25 clients you placed AEG</p> <p>7 insurance with, approximately how many have</p> <p>8 submitted claims to McClure & Associates for</p> <p>9 Worker's Comp benefits?</p> <p>10 A. My guess is probably all 25.</p> <p>11 Q. So all 25, to the best of your</p> <p>12 knowledge, have submitted a claim because one of</p> <p>13 their employees has been injured?</p> <p>14 MR. SCOLARO: Objection. Asked and</p> <p>15 answered, but to the extent you know the answer to</p> <p>16 the question, you may answer it.</p> <p>17 THE WITNESS: You know, I don't have</p> <p>18 that information in front of me, so I really can't</p> <p>19 say; but, you know, typically there might be one</p> <p>20 or two accounts that don't have any claims at all,</p> <p>21 maybe three -- I don't know -- but the majority of</p> <p>22 clients have claims.</p> <p>23 BY MR. MCCLURE:</p> <p>24 Q. Because McClure & Associates does not</p>

12 (Pages 42 to 45)

Page 46	Page 48
<p>1 administer those claims, do you have any records 2 of them here at your office? 3 MR. SCOLARO: Objection. Form, but to 4 the extent you understand what "them" means, you 5 can answer the question. 6 THE WITNESS: Why don't you ask in a 7 way -- 8 BY MR. RICE: 9 Q. I can rephrase the question. You had 10 mentioned that McClure & Associates does not 11 administer claims, correct? 12 A. Correct. 13 Q. Do you have copies of any claims files 14 relating to any of these claims made by these 25 15 clients for Worker's Comp claims? 16 A. Brimar does. 17 Q. You also have a copy of Brimar files? 18 A. No. 19 Q. You do not? 20 A. I don't keep copies of Brimar files. 21 Brimar keeps copies of those files. 22 Q. I thought you had said earlier Brimar -- 23 A. Involve claim files? They are in this 24 office, but those are Brimar claims files.</p>	<p>1 made. The only thing we talk about are loss 2 ratio premium to claims. 3 Q. Did any of your clients ever contact 4 McClure & Associates to report a claim? In that 5 event did you just transfer to Brimar? 6 A. Well, they didn't contact me, but they 7 would have called our number and probably would 8 have been transferred to Brimar, yes. 9 Q. How many employees does Brimar have? 10 A. The claim, three that I do. 11 Q. In addition to the three staff members 12 that you share, do they have anybody else working 13 for them besides Mr. Ciarrachi? 14 A. There are some producers that 15 administered claims for AEG for a fee per claim, 16 and they worked on Brimar's behalf as independent 17 contractors. 18 Q. Did you have any involvement in the 19 decision to pay claims directly for AEG insureds? 20 MR. SCOLARO: Objection. Foundation, 21 but to the extent you understand the question, you 22 may answer it. 23 THE WITNESS: Can you repeat the 24 question.</p>
Page 47	Page 49
<p>1 Q. Brimar shares an office with you? 2 A. Yes. 3 Q. They share the same 2067 or 2077? 4 A. I don't know what -- they are 2067. 5 Q. They share the same address? 6 A. Same address. 7 Q. Do you recall when the first claim was 8 ever made by a claimant -- 9 A. No. 10 Q. -- involving -- when the first claim was 11 ever made by one of the 25 clients relating to an 12 AEG policy? 13 A. No. 14 Q. Would Brimar have that information? 15 A. They would have the claims files. I 16 don't know if they would list when the first claim 17 happened is. 18 Q. When the first claim was made, whenever 19 it was made, did you have a discussion with anyone 20 from Brimar about that claim? 21 A. I didn't discuss claims with Brimar. 22 Q. Did Brimar make you aware that a claim 23 had been made? 24 A. They don't make me aware that claims are</p>	<p>1 BY MR. RICE: 2 Q. Sure. You said that you were not 3 involved or McClure & Associates was not involved 4 in the claims process for AEG, correct? 5 A. Correct. 6 Q. Did you have any involvement in the 7 decision to pay claims directly for claims made by 8 insureds that had AEG insurance? 9 A. When? 10 Q. From 2005 to 2007. 11 A. As a claims administrator? Mike Ward 12 hired Brimar to handle his claims. He didn't 13 hire McClure & Associates. He hired Brimar, so 14 that was a relationship between AEG and Brimar. 15 It had nothing to do with me. 16 Q. Is that also true post 2007 to the 17 present? 18 A. Explain that to me. 19 Q. My question to you is -- 20 MR. SCOLARO: After his question I 21 would like to take a break. 22 BY MR. RICE: 23 Q. We are going to get into it in a little 24 bit. I think you had mentioned it already that</p>

13 (Pages 46 to 49)

Page 50	Page 52
<p>1 some of the premium money, the \$1.3 million had 2 been used to pay claims directly to people who had 3 AEG insurance, is that correct? 4 A. Correct. 5 Q. All I want to know is now did you have 6 any involvement in the decision to pay claims? 7 A. To mitigate the damages, yes. 8 MR. SCOLARO: Can I take a quick break. 9 MR. RICE: Sure. 10 (Break had.) 11 BY MR. RICE: 12 Q. You had indicated before we want on a 13 break that you had been involved in some of the 14 decision making in terms of payments of some of 15 these claims made by AEG insureds, is that 16 correct? 17 A. Yes. 18 Q. When checks or money was ever paid, were 19 those funds paid by McClure & Associates or 20 Brimar? 21 A. They were paid by McClure & Associates 22 or Ciarrachi. 23 Q. The partnership? 24 A. Correct. This is post AEG liquidation.</p>	<p>1 that we had for our clients that we had an 2 agreement from them not to pay AEG. The 3 Department of Insurance directed me what to do. 4 Don't pay AEG. AEG at the same time was 5 threatening to cancel insurance on \$6 million 6 worth of business, and the Department of Insurance 7 was apprised of that. Everything was going on 8 because there had to be a solution for where that 9 insurance would go. 10 Q. You have indicated you had approximately 11 \$1.3 million of client premium trust money, 12 correct? 13 A. Yes, that we had held. 14 Q. Did you hold that because of the AEG 15 investigation or -- 16 A. Because the Department of Insurance was 17 trying to figure a way out of taking care of this 18 entire problem that they had been investigating 19 with AEG and RCA. 20 Q. I am showing you what's been marked as 21 Group 3 for your deposition. Take a moment just 22 to flip through those and review them and let me 23 know when you have had a chance to look through 24 them.</p>
Page 51	Page 53
<p>1 Q. Do you know whether any claims were paid 2 directly by McClure and Ciarrachi prior to AEG 3 liquidation? 4 MR. SCOLARO: Objection. Foundation. 5 McClure & Ciarrachi, but to the extent you 6 understand the question, you can answer it. 7 THE WITNESS: McClure & Ciarrachi didn't 8 pay any claims prior to inability to pay out of 9 the premium trust fund money that we have of our 10 clients. 11 BY MR. RICE: 12 Q. Did Brimar make any payments prior to 13 AEG's inability to make the payments directly? 14 A. AEG would give Brimar -- they were 15 funding the accounts to pay the claims, so Brimar 16 never paid a claim that wasn't paid by AEG. AEG 17 would fund those accounts. 18 Q. It was not until AEG was liquidated that 19 a decision had to be made how was the money going 20 to be paid or where was money going to come from? 21 A. It was prior to liquidation. It was 22 when AEG stopped funding the accounts, and I went 23 to the Department of Insurance and asked them for 24 the ability to pay claims based on the revenues</p>	<p>1 A. Okay. 2 Q. Do you recognize these documents? 3 A. Yes. 4 Q. What are they? 5 A. Claim documents into the liquidator. 6 Q. Who would have prepared these documents? 7 A. I'm not sure if the producers prepared 8 them or who prepared them. 9 Q. If it wasn't the producers, who else 10 would it have been? 11 A. Directly from the insureds. 12 Q. I notice that on some of these 13 documents -- some of these pages of Group Exhibit 14 3 in the middle there is an amount of a claim. 15 Do you see that, middle right of the page? There 16 is a box that has some handwritten notes in them? 17 A. Yes. 18 Q. On some of the pages they will show an 19 amount and then paid or no claim made. Do you 20 see what I'm referring to? 21 A. Yes. 22 Q. Do you know who would have paid those 23 sums that are identified on these pages of Group 24 Exhibit 3?</p>

14 (Pages 50 to 53)

Page 54	Page 56
<p>1 A. Possibly us. Possibly the insured.</p> <p>2 Q. When you say "us," who do you mean?</p> <p>3 A. Possibly Brimar or McClure & Ciarrachi,</p> <p>4 either, or the insured if these were deductible</p> <p>5 amounts.</p> <p>6 Q. If you made these payments, you meaning</p> <p>7 McClure Brimar --</p> <p>8 A. McClure and Ciarrachi.</p> <p>9 Q. -- do you have a way to keep track of</p> <p>10 the amounts you paid?</p> <p>11 A. Yes.</p> <p>12 Q. Do you currently have a total of the</p> <p>13 amounts you've paid?</p> <p>14 A. I could total it.</p> <p>15 Q. How is that information stored?</p> <p>16 A. Checkbook register.</p> <p>17 Q. So is that something you would be able</p> <p>18 to gather and give to your attorney if I requested</p> <p>19 it?</p> <p>20 A. Yes.</p> <p>21 Q. If McClure and Ciarrachi did not make</p> <p>22 these payments, who else would have made them?</p> <p>23 A. The insured.</p> <p>24 Can I ask a question of my attorney</p>	<p>1 signed anywhere. This isn't an official form, so</p> <p>2 I have all the official forms of everything that's</p> <p>3 gone into the liquidator, and I have signed every</p> <p>4 form because I paid for those claims.</p> <p>5 Q. So just so I understand correctly, you</p> <p>6 have forms that are somewhat similar to these</p> <p>7 documents in Group Exhibit 3, but they have</p> <p>8 certainly been authorized or signed by you and</p> <p>9 they may contain slightly different information?</p> <p>10 A. They contain a lot of different</p> <p>11 information, and they are not only signed by me,</p> <p>12 but it has all the documentation, supporting</p> <p>13 documents.</p> <p>14 Q. So medical records, whatever you need to</p> <p>15 make the claim?</p> <p>16 A. Everything that's needed to make a claim</p> <p>17 has been given to the liquidator.</p> <p>18 Q. Who would have that information now?</p> <p>19 A. My attorney.</p> <p>20 Q. When these forms in Group Exhibit 3 were</p> <p>21 submitted to you or Brimar, who would be</p> <p>22 responsible for going through the paperwork to</p> <p>23 insure that these claims -- to determine whether</p> <p>24 these claims should, in fact, be paid?</p>
Page 55	Page 57
<p>1 here?</p> <p>2 Q. Sure.</p> <p>3 MR. SCOLARO: Off the record.</p> <p>4 (Break had.)</p> <p>5 MR. SCOLARO: I think my client -- We</p> <p>6 would like to clarify an answer. I think if the</p> <p>7 court reporter -- could the court reporter read it</p> <p>8 back, please.</p> <p>9 (Record read.)</p> <p>10 MR. SCOLARO: If could you read back</p> <p>11 that question, my client would like to clarify his</p> <p>12 answer to that. Go ahead.</p> <p>13 (Record read.)</p> <p>14 BY MR. RICE:</p> <p>15 Q. Who would have prepared these documents?</p> <p>16 A. I don't know who prepared these</p> <p>17 documents. Every document that was given to the</p> <p>18 liquidator was signed by me, prepared by our</p> <p>19 producers based on the claims dollars that were</p> <p>20 paid on each claim. These particular forms</p> <p>21 looked like they were sent out by the liquidator</p> <p>22 directly to the insureds, and the insureds would</p> <p>23 have filled this amount out directly, but these</p> <p>24 are not the official forms because nothing is</p>	<p>1 MR. SCOLARO: Objection. Foundation.</p> <p>2 But to the extent that that question reflects what</p> <p>3 occurred, you may answer it.</p> <p>4 THE WITNESS: Could you rephrase that</p> <p>5 question?</p> <p>6 BY MR. RICE:</p> <p>7 Q. Sure. It sounded like to me -- I may</p> <p>8 have misunderstood what you said earlier -- these</p> <p>9 forms would have been submitted to either Brimar</p> <p>10 or --</p> <p>11 A. They were submitted to McClure &</p> <p>12 Associates.</p> <p>13 Q. Then McClure & Associates would have to</p> <p>14 verify the information in these forms along with</p> <p>15 the accompanying documentation, is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. Then once you had verified that the</p> <p>18 information you needed for the claim was there,</p> <p>19 you would authorize these to be sent back to the</p> <p>20 liquidator, correct?</p> <p>21 A. The first thing that happened to even</p> <p>22 get these sent in was that claims had to be paid,</p> <p>23 and the first thing I did was I hired Austin</p> <p>24 Resolutions to negotiate all of the outstanding</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 medical bills.</p> <p>2 Austin Resolutions out of Texas</p> <p>3 closed out the outstanding medical probably at</p> <p>4 twenty-five cents on the dollar for probably 90</p> <p>5 percent of the medical, outstanding medical, on</p> <p>6 the hundreds of claims that we had.</p> <p>7 When Austin Resolutions would come</p> <p>8 back with a signed contract, that contract was</p> <p>9 allowing us to go back to the liquidator and</p> <p>10 collect -- I had to have a signature for both, you</p> <p>11 know, for this payment of dollars they agreed to</p> <p>12 allow. I think it's Brimar to go back and go to</p> <p>13 the liquidator for the money that they had been</p> <p>14 paid or a percentage of, and so the only forms</p> <p>15 that have been sent in are forms that have been</p> <p>16 completed, claims closed, and it doesn't represent</p> <p>17 all of the payments that we have made because any</p> <p>18 payments that have been made through --</p> <p>19 We have hired law firms to represent</p> <p>20 clients and to close cases at the Commission. We</p> <p>21 have paid for legal. We have paid for</p> <p>22 settlements outside of anything that we have</p> <p>23 turned into the liquidator.</p> <p>24 Q. Based on what you have just told me, a</p>	<p style="text-align: right;">Page 60</p> <p>1 mitigate the exposure, to help cut the damages, to</p> <p>2 help take care of the insureds that needed</p> <p>3 coverage. American Automobile Insurance responded</p> <p>4 zero, zero.</p> <p>5 I had exposure, one case, one trial</p> <p>6 case that I sent in to my carrier to actually see</p> <p>7 if they would respond, Genie; and you know what</p> <p>8 happened? I got sued on an account that I said I</p> <p>9 will pay the \$23,000 judgment that was given to me</p> <p>10 when I was under an order to cease and desist. I</p> <p>11 couldn't respond to anybody.</p> <p>12 The attorney went back there and got</p> <p>13 that hit with penalties for \$100-some thousand of</p> <p>14 which he is still trying to get, and suing my</p> <p>15 insured; so, yeah, I have made decisions, lots of</p> <p>16 decisions because I have no one to help me</p> <p>17 mitigate.</p> <p>18 I have taken the claims and mitigated</p> <p>19 the exposure beyond the millions that I would have</p> <p>20 had a plethora of lawsuits against me had I not</p> <p>21 taken action; so, yes, you're the first person</p> <p>22 from American Automobile Insurance that's come in</p> <p>23 here, and you're taking my deposition, and no one</p> <p>24 showed up. I have asked them many times to come</p>
<p style="text-align: right;">Page 59</p> <p>1 lot has gone into the post AEG liquidation</p> <p>2 handling and administration of claims that you</p> <p>3 have obviously been involved in that process; is</p> <p>4 that fair to say?</p> <p>5 A. Yes.</p> <p>6 Q. That's fair?</p> <p>7 A. Yes.</p> <p>8 Q. Because this is only a small portion of</p> <p>9 the business you do on a day-to-day basis, have</p> <p>10 you set up internally here within McClure &</p> <p>11 Associates or Brimar a way to help facilitate that</p> <p>12 sliver of your business in terms of handling and</p> <p>13 processing these claims?</p> <p>14 A. No.</p> <p>15 Q. I should say obviously the reason why</p> <p>16 these questions are relevant for purposes of this</p> <p>17 discussion is you're obviously trying to collect</p> <p>18 money from American Automobile to help reimburse</p> <p>19 for payments you have made to these claimants, is</p> <p>20 that correct?</p> <p>21 A. You're the first person from American</p> <p>22 Automobile to show up. I asked American</p> <p>23 Automobile to show up two years ago to come in and</p> <p>24 take a look at all of these claims to help to</p>	<p style="text-align: right;">Page 61</p> <p>1 in here and take a look at these claims files.</p> <p>2 Q. Okay. I appreciate your statements.</p> <p>3 I will ask my question again. You are looking to</p> <p>4 recover money in this lawsuit for money that</p> <p>5 either McClure & Ciarrachi or Brimar has paid out</p> <p>6 directly to the claimants, correct?</p> <p>7 A. Yes. That plus punitive damages by the</p> <p>8 time I get done.</p> <p>9 Q. What I'm asking you is: Is there a way</p> <p>10 personally within McClure & Associates and Brimar</p> <p>11 to calculate the amount of money that was paid out</p> <p>12 directly to claimants?</p> <p>13 A. Absolutely.</p> <p>14 Q. Have you given that information to your</p> <p>15 attorney?</p> <p>16 A. Not the total amount yet.</p> <p>17 Q. That is something you could calculate,</p> <p>18 correct?</p> <p>19 A. I could calculate that it's still</p> <p>20 ongoing.</p> <p>21 Q. I am going to ask on the record. I know</p> <p>22 we asked it in discovery.</p> <p>23 MR. SCOLARO: I think that part of my</p> <p>24 client's point is that even when the first</p>

16 (Pages 58 to 61)

Page 62	Page 64
<p>1 discovery was issued, that figure changes and can 2 change at any time. To the extent that we have 3 that current information, sure, it can be 4 provided.</p> <p>5 MR. RICE: I also believe that we had 6 asked a list of the claimants because again one of 7 the purposes of the discovery was to assess the 8 amount of outstanding money that was paid to 9 justify one the amounts that's claimed in the 10 counterclaim; and, 2, the documentation to support 11 it so that we can obviously assess the risk; and, 12 2, know when these claims were made, when they 13 were paid, and obviously that's part of the entire 14 issue in the lawsuit, so to the extent that 15 documents have not been produced that were either 16 responsive to the -- again, I already heard about 17 claims documents that Brimar may have. They have 18 made copies.</p> <p>19 THE WITNESS: We had 15 boxes of claims. 20 Anyone is welcome to come in here and take a look, 21 but I am not going to copy all that.</p> <p>22 MR. SCOLARO: To the extent that there 23 was responsive documents at the time you issued 24 the request to produce, we have turned over</p>	<p>1 participate in this. When was the first time that 2 you made American Automobile aware of this 3 problem?</p> <p>4 A. As soon as I hired a law firm I had them 5 contact the claims division, David Perlmeter 6 (phonetic), the adjudicator. He would have that 7 in his file. That would have been in '07.</p> <p>8 Q. Was there any period of time that 9 McClure & Associates and/or Brimar elected to try 10 to handle the problem before notifying American 11 Automobile?</p> <p>12 MR. SCOLARO: Objection. Foundation as 13 to the term handle but --</p> <p>14 THE WITNESS: What? What do you mean by 15 handle?</p> <p>16 BY MR. RICE:</p> <p>17 Q. You became aware in late 2005 that there 18 may be a problem with either RCA and AEG, correct?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Did you immediately notify American 21 Automobile about that problem?</p> <p>22 A. I had my attorneys notify them very 23 close to the claim that we became aware and put 24 them on notice.</p>
Page 63	Page 65
<p>1 everything we have; however, this has been 2 ongoing, obviously, with the liquidator, anything 3 of that nature.</p> <p>4 Have there been more concrete 5 production since that time? Perhaps we will 6 perhaps take a second look, supplement responses 7 that we can give you guys. That's something we 8 are happy to take a second look at.</p> <p>9 MR. RICE: My concern is we are not 10 going to address maybe some of these documents. I 11 just want to reserve for the record my right if I 12 have to redepose somebody in the case because 13 documents come up that have not supplemented, so I 14 am reserving my right to do that. I am not 15 suggesting that anything hasn't been turned over; 16 that sounds to me out there that I haven't seen. 17 We can talk about whether or not those are 18 responsive or not. That's all I am saying for 19 purposes of the record.</p> <p>20 MR. SCOLARO: Fair.</p> <p>21 BY MR. RICE:</p> <p>22 Q. You had mentioned in your discussion 23 that you had offered to let American Automobile 24 come here and review all the claim files and</p>	<p>1 Q. Who was your attorney at that time?</p> <p>2 A. Childress Duffy and Goldblatt. I 3 believe Kathleen Detrick was the person who first 4 was involved in that.</p> <p>5 Q. Did you have any direct contact with 6 either Mr. Perlmeter or AEG directly?</p> <p>7 A. Yes.</p> <p>8 Q. Was that before or after you fired 9 Kathleen Detrick at Childress and Duffy?</p> <p>10 A. After.</p> <p>11 Q. So is it fair to say that the first 12 notice that was given to American Automobile on 13 behalf of McClure & Associates would have come 14 from Childress & Duffy?</p> <p>15 A. Probably came from me, through my 16 attorneys. I am not sure who was involved. I 17 just know that I had conversations with David 18 Perlmeyer.</p> <p>19 Q. But you believe that to be post your -- 20 after Childress and Duffy?</p> <p>21 A. I scheduled Childress & Duffy the day 22 Norm Cofeld showed up in my office.</p> <p>23 Q. He is who?</p> <p>24 A. The investigator for the Department of</p>

17 (Pages 62 to 65)

Page 66	Page 68
<p>1 Insurance investigating RCA.</p> <p>2 Q. Again, just I am clear, you believe that</p> <p>3 after hiring Childress & Duffy after the</p> <p>4 investigator came would have been the first time</p> <p>5 you would have reported the incident to American</p> <p>6 Automobile or put them on notice of the potential</p> <p>7 loss?</p> <p>8 A. After I found out about the potential of</p> <p>9 stolen money.</p> <p>10 Q. Did you ever receive a response from</p> <p>11 American Automobile?</p> <p>12 A. Nothing in writing that I can recall.</p> <p>13 We did finally -- they had never given me a copy.</p> <p>14 Kathleen was the first person to ever get a copy</p> <p>15 of the policy sent.</p> <p>16 Q. When did you first notify American</p> <p>17 Automobile of your intentions to seek</p> <p>18 reimbursement for monies paid directly to</p> <p>19 claimants?</p> <p>20 A. After the liquidator took the money that</p> <p>21 we had to pay claims.</p> <p>22 Q. Do you recall when that was?</p> <p>23 A. The day they liquidated them.</p> <p>24 Q. Approximately how much money has been</p>	<p>1 money over to the liquidator?</p> <p>2 A. Yes.</p> <p>3 Q. How much money was left out of the 1.3</p> <p>4 million when you turned it over to the liquidator?</p> <p>5 A. I don't know. Maybe it was 1 million</p> <p>6 200 some thousand. I am not sure.</p> <p>7 Q. So you hadn't made many claims out of</p> <p>8 that money yet?</p> <p>9 A. No.</p> <p>10 Q. Do you know what the liquidator did with</p> <p>11 that money?</p> <p>12 A. To the best of my knowledge, they</p> <p>13 haven't paid one penny in claims to anybody.</p> <p>14 To the best of my knowledge, they are</p> <p>15 using it for ongoing expenses in going to court</p> <p>16 and showing up and talking to the judge. To the</p> <p>17 best of my knowledge, they will pay out hardly</p> <p>18 anything. They are denying every claim that comes</p> <p>19 down the pike to everybody.</p> <p>20 Q. Is there still an avenue by which you</p> <p>21 could submit a request for reimbursement for any</p> <p>22 money that has been paid directly by you to a</p> <p>23 claimant?</p> <p>24 A. To who?</p>
Page 67	Page 69
<p>1 paid to claimants directly out of funds either</p> <p>2 through Brimar & Ciarrachi or Brimar; do you know?</p> <p>3 A. McClure & Associates has paid probably</p> <p>4 in excess of 600, \$750,000. That's a guesstimate.</p> <p>5 Q. Has any of that money -- have you ever</p> <p>6 been reimbursed from any source for any of the</p> <p>7 money you paid directly?</p> <p>8 A. No.</p> <p>9 Q. So you never got any money from the</p> <p>10 liquidation?</p> <p>11 A. No.</p> <p>12 Q. You indicated that you had conferred</p> <p>13 with the Department of Insurance about using the</p> <p>14 \$1.3 million or so of client trust money to pay</p> <p>15 back -- to pay claims?</p> <p>16 A. Correct.</p> <p>17 Q. You obtained their approval to do that,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Eventually they liquidated the company</p> <p>21 and asked and took command of that money back?</p> <p>22 A. Actually told us -- no. They actually</p> <p>23 stopped approving any payments.</p> <p>24 Q. Did that money end up -- turning that</p>	<p>1 Q. To the liquidator.</p> <p>2 A. I am not sure.</p> <p>3 Q. Have you tried to figure out whether or</p> <p>4 not that avenue is still available to you?</p> <p>5 A. You know, I have submitted all the stuff</p> <p>6 I can so far. I don't know that it's still</p> <p>7 opened for continued opportunity. They are</p> <p>8 claims that are open. The only thing that I am</p> <p>9 allowed to submit are things that I have releases</p> <p>10 for. Most of those -- 90 percent of them are</p> <p>11 taken care of.</p> <p>12 Q. The type of policies that you issue for</p> <p>13 Worker's Comp insurance or the ones that you did</p> <p>14 issue where AEG was involved, are we running into</p> <p>15 a deadline of there can be no new claims coming</p> <p>16 out of those policies, are you aware of?</p> <p>17 A. Typically, there is a two-year statute.</p> <p>18 Q. So we will reach a point in time where</p> <p>19 there should be no new claims on those policies,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Are you aware whether or not we have hit</p> <p>23 those limitations period, or are they still</p> <p>24 ongoing?</p>

18 (Pages 66 to 69)

Page 70	Page 72
<p>1 A. I think we have hit those limitations. 2 We haven't seen a new climb yet. 3 Q. You or Brimar haven't received any new 4 claims? 5 A. Uh-huh. 6 Q. When was the last time you think you 7 received -- 8 A. No idea. 9 Q. That's information that Brimar might 10 have? 11 A. Typically with Worker's Compensation 12 claims are reported within 60 days, typically, 13 and, you know, I don't know what the limitation 14 is. I would have to find out, but I don't 15 expect -- it's not likely a bill we don't have 16 outstanding with some exposure. 17 Q. Are you aware of other claims that are 18 pending right now that have not been paid? 19 A. Yes. 20 Q. Do you know approximately how much money 21 is outstanding in unpaid claims? 22 A. No, because there are some cases have to 23 go to trial. There are some that were denied 24 coverage. You know, in the best case scenario,</p>	<p>1 astronomical. 2 McClure & Associates would have been 3 sued by every insured that we had for every claim 4 that there was. The penalties would be beyond 5 anyone's ability to pay. It would go beyond the 6 limit that I have on the E & O insurance. 7 Q. It's fair to say you didn't have any 8 contractual obligation with any of these insureds 9 to step in in the event that AEG became 10 liquidated? 11 MR. SCOLARO: Objection. Calls for a 12 legal conclusion. To the extent the client 13 understands or knows the answer to that question, 14 he may answer. 15 THE WITNESS: I have a moral obligation. 16 BY MR. RICE: 17 Q. It wasn't my question. The question 18 was: Did you have one written contract with any 19 of them? 20 A. There was a contract of insurance with 21 every one of them. 22 Q. Did McClure & Associates have a written 23 contract with any of your clients to reimburse 24 them in the event that their insurer became</p>
Page 71	Page 73
<p>1 our defenses stand up. In the worse case scenario 2 we have to pay some of those. Could be a quarter 3 of a million dollars. 4 Q. You say the claim was denied. Who 5 denied those claims? 6 A. Brimar did. 7 Q. So Brimar made a decision on some of 8 these claims to deny them for whatever reason, is 9 that correct? 10 A. Yes. Fraudulent claim. 11 Q. In those instances attorneys were 12 retained to represent the employers in those 13 cases? 14 A. Yes. 15 Q. Those cases will likely go to trial? 16 A. Yes. 17 Q. So the exposure is their potential 18 adverse judgment against the employer? 19 A. Plus legal fees. 20 Q. You had certainly indicated before or at 21 least suggested before why did Brimar elect to pay 22 these claims directly? 23 A. McClure & Associates elected to do that 24 with Brimar; and if we didn't, the exposure was</p>	<p>1 insolvent? 2 A. No. 3 Q. Did you have any oral contract with any 4 of your clients to reimburse them in the event 5 their insurer became insolvent? 6 A. No. 7 Q. Did Brimar have any written contract 8 with any of your clients or their clients to 9 reimburse them for claims that were not paid 10 because an insurer became insolvent? 11 A. No. 12 Q. Did you have any oral contract to do 13 that? 14 A. No. 15 Q. When you made payments to claimants -- 16 before you made a payment to a claimant, did you 17 contact American Automobile to discuss that 18 payment? 19 A. When they decided that they weren't 20 going to pay, yes. I told them that I was going 21 to pay claims. I told them before I told Perlmeyer 22 that we were going to pay claims to mitigate the 23 exposure. He made it very clear it was going to 24 be a long process; and they weren't going to send</p>

19 (Pages 70 to 73)

Page 74	Page 76
<p>1 anyone out here to see these files.</p> <p>2 Q. Is it fair to say then that your</p> <p>3 decision to pay these claims was a business</p> <p>4 decision to help prevent those clients from suing</p> <p>5 you in subsequent lawsuits?</p> <p>6 MR. SCOLARO: Objection. Foundation.</p> <p>7 Foundation regarding business decision, freezing</p> <p>8 of business decision, and objection with respect</p> <p>9 to the extent it calls for a legal conclusion, but</p> <p>10 to the extent the client understands the question,</p> <p>11 you may answer it.</p> <p>12 THE WITNESS: I don't really understand</p> <p>13 the question.</p> <p>14 BY MR. RICE:</p> <p>15 Q. You had indicated earlier that you were</p> <p>16 concerned if you didn't pay these claims there was</p> <p>17 potential huge exposure from McClure & Associates,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is it fair to say in weighing those</p> <p>21 options the decision you made was to pay those</p> <p>22 claims in an effort to maybe prevent lawsuits</p> <p>23 being filed against you?</p> <p>24 A. Yes. It was to hire Austin Resolutions</p>	<p>1 A. No.</p> <p>2 Q. I am showing you what's been marked as</p> <p>3 Exhibit 4 for your deposition. Just take a moment</p> <p>4 to review that and let me know when you have had a</p> <p>5 chance to do that.</p> <p>6 A. Okay.</p> <p>7 Q. Do you recognize that document?</p> <p>8 A. No.</p> <p>9 Q. Have you ever seen that document before?</p> <p>10 A. At one time.</p> <p>11 Q. Who's Bill Wall?</p> <p>12 A. A producer.</p> <p>13 Q. Does he work at this office?</p> <p>14 A. Yes.</p> <p>15 Q. Is he currently still employed with you?</p> <p>16 A. Yes.</p> <p>17 Q. He is one of your producers that has an</p> <p>18 agency agreement with McClure?</p> <p>19 A. Yes.</p> <p>20 Q. Was Mr. Wall, the producer, responsible</p> <p>21 for placing Genie Temporary Services Worker's Comp</p> <p>22 with AEG?</p> <p>23 A. Yes.</p> <p>24 Q. Is Exhibit 4 a document or a type of</p>
Page 75	Page 77
<p>1 to reduce the outstanding obligation and to hire</p> <p>2 law firms to represent the insureds and to</p> <p>3 mitigate their exposure, and at the same time</p> <p>4 mitigate the exposure back to myself knowing that</p> <p>5 those exposures were much greater than my E & O</p> <p>6 policy.</p> <p>7 Q. Now that the \$1.3 million of trust money</p> <p>8 is no longer available, what is the source of the</p> <p>9 funds that is being used to pay these claims?</p> <p>10 A. My own personal revenue.</p> <p>11 Q. Is Mr. Ciarrachi putting any of his</p> <p>12 personal funds in this as well?</p> <p>13 A. We are 50/50 partners so 50 percent of</p> <p>14 of his money goes in there too.</p> <p>15 Q. Is the money being paid out of the</p> <p>16 McClure Ciarrachi partnership?</p> <p>17 A. Yes.</p> <p>18 Q. It's not coming out of McClure &</p> <p>19 Associates or Brimar LTD?</p> <p>20 A. It's coming out of our funnel account.</p> <p>21 Q. Counsel represents one of the claimants</p> <p>22 that has made a claim against McClure &</p> <p>23 Associates, Genie Temporary Services. Do you</p> <p>24 recall when Genie first made a claim against you?</p>	<p>1 document you would keep in the normal course of</p> <p>2 business?</p> <p>3 A. It should be in the file.</p> <p>4 Q. Do you know whether Genie had reported a</p> <p>5 claim to McClure & Associates before this letter</p> <p>6 was received?</p> <p>7 A. Yes.</p> <p>8 Q. Yes, they had reported one earlier?</p> <p>9 A. This particular claim was reported, yes.</p> <p>10 Q. The claim of Mr. Ramirez?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know whether Genie had reported</p> <p>13 any other claims prior to Mr. Ramirez' claim?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Speaking specifically about Mr. Ramirez'</p> <p>16 claim, in light of the fact that this letter</p> <p>17 obviously post-dates the liquidation of AEG, can</p> <p>18 you kind of describe to me how you would handle a</p> <p>19 claim like this knowing that it involves an AEG</p> <p>20 policy?</p> <p>21 A. This particular claim happened during</p> <p>22 the -- I don't know if this is a claim that was</p> <p>23 prior -- this was in the cease and desist phase.</p> <p>24 Is this a claim that's in the cease and desist</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 claim? The claim that I am familiar with, Genie, 2 happened in the cease and desist phase of AEG, and 3 we couldn't do anything; and it went to trial, and 4 there was an award given, \$23,000. 5 After the cease and desist we agreed 6 that we would pay that 23,000, but the attorney 7 had already gone in and gotten sanctions and 8 increased that to offer a hundred thousand 9 dollars, and we asked for the defense from our 10 E & O carrier the defendants go back in and get 11 that reduced down to the \$23,000 and then we would 12 deny it. 13 Q. Let me ask you this: If a claim like 14 this were to be submitted today where you got a 15 letter from a client saying John Q was injured at 16 work; here is our claim we are submitting, could 17 you walk me through what you would do today to 18 facilitate or administer that claim? 19 MR. SCOLARO: Objection to the extent 20 that a claim -- phrase it a claim like this, a 21 foundation -- I am not quite sure what that refers 22 to, but to the extent the deponent understands the 23 question, he may answer it. 24 THE WITNESS: Tell me if you're talking</p>	<p style="text-align: right;">Page 80</p> <p>1 time period in which you were writing AEG 2 insurance, and the claim occurred during one of 3 those policy periods. 4 A. Okay. Knowing that the A and O carrier 5 has made every attempt not to pay me anything or 6 be involved in any way, I would first of all 7 investigate the claim of hiring an adjuster to 8 investigate and find out if the claim was 9 compensable. If there are witnesses, we would do 10 an entire workup. If it was a case that had 11 attorney representation, we would probably hire a 12 law firm and, you know, represent our insured, 13 depending. It may be -- I'm not sure. Coming 14 in this late I am not sure that there would be any 15 coverage. We might just deny the claim. I 16 don't know. It really depends on the nature of 17 the claim and what happened. I can't imagine we 18 could still have a claim that would be able to be 19 turned in. 20 Q. Correct me if I am wrong, as part of 21 your hesitancy are at least the concern that it 22 might be different depending on when the claim was 23 made. Is that based on the fact if the claim were 24 reported to you during -- Strike that.</p>
<p style="text-align: right;">Page 79</p> <p>1 about a claim came in from AEG from a claim, or 2 what are you talking about? 3 BY MR. RICE: 4 Q. I am going to give strictly a 5 hypothetical right now. I want to try to 6 understand what's going on here in terms of the 7 administration of claims involving clients who 8 once had insurance with AEG. 9 A. Uh-huh. 10 Q. If one of your clients sent you a letter 11 or sent Brimar a letter saying one of my employees 12 has made a Worker's Comp claim; I want to submit 13 it to you so you're aware of it; and that claim 14 obviously can no longer be paid by AEG directly, 15 so walk me through how you and Brimar or you and 16 Mr. Ciarrachi would go through deciding how we are 17 going to handle this claim. 18 A. You're going to have to be very specific 19 with me. Give me a date that your claim happened. 20 Tell me it was one of the insureds and what 21 program they were under, and then I can tell you 22 specifically what would happen. 23 Q. Let's say it was an insurance policy 24 that was issued from 2005, late 2005 to '07, the</p>	<p style="text-align: right;">Page 81</p> <p>1 If the claim had occurred during the 2 two-year period when AEG was still operable, would 3 your answer change if the claim was made or claim 4 occurred post AEG liquidation? 5 A. You said AIG; then you changed it to 6 AEG. 7 Q. Would your answer change in terms of how 8 you would handle a claim if the date of loss 9 occurred during the time in which AEG was still in 10 operation versus a claim that was made perhaps two 11 years after AEG went into liquidation? 12 A. Absolutely. 13 Q. How would that change; would that fact 14 change? How you handle a claim? 15 A. When AEG was operating, AEG paid for all 16 claims. They funded the claims. Those claims 17 were discussed with Mike Ward. Mike Ward would 18 come in every week, sit down with two guys handing 19 the claims, go over payments, everything from the 20 outside investigation that was done to attorney's 21 fees, you know, settlements, all of that was done 22 by AEG or approved by AEG. After the fact all of 23 that moved from the producers that were handling 24 it back over to myself and Dave because we are the</p>

21 (Pages 78 to 81)

Page 82	Page 84
<p>1 ones who are responsible.</p> <p>2 Q. When is the last time you dealt with</p> <p>3 Mike Ward?</p> <p>4 A. Cease and desist. I have never talked</p> <p>5 to him since.</p> <p>6 Q. Aside from you and Dave Ciarrachi is</p> <p>7 anybody else involved in the process that you have</p> <p>8 described to us in terms of deciding how to pay</p> <p>9 claims?</p> <p>10 A. (Shaking head.)</p> <p>11 Q. That's a no?</p> <p>12 A. That's no. Other than our attorneys that</p> <p>13 we hire.</p> <p>14 Q. Sure. Of course. You said you</p> <p>15 represent or work with at least six or seven other</p> <p>16 insurance companies, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Have you ever encountered a situation</p> <p>19 like this where you have had to assume essentially</p> <p>20 the role of an insurer and hire attorneys and</p> <p>21 defend claims and pay out claims directly?</p> <p>22 A. We have never experienced anything like</p> <p>23 we have experienced with AEG. Have we had the</p> <p>24 ability to hire law firms and to adjudicate</p>	<p>1 A. They told me that I wouldn't get one.</p> <p>2 I only get a certificate. I asked three years in</p> <p>3 a row for a policy. They said no. I had been</p> <p>4 with Utica before. It's the first time in my life</p> <p>5 I couldn't get a copy of a policy.</p> <p>6 Q. Who told you that?</p> <p>7 A. That was the Brown and Brown who handled</p> <p>8 the account for this particular program. I only</p> <p>9 signed up for them because one of my carriers told</p> <p>10 me you ought to sign up on our policy. He told me</p> <p>11 it was a master program, and I didn't get a copy.</p> <p>12 Q. How many years were you insured with</p> <p>13 American Automobile?</p> <p>14 A. Five, six, seven.</p> <p>15 Q. Do you know the period in time in which</p> <p>16 you have been insured with them?</p> <p>17 A. Probably clear back to '03, '04,</p> <p>18 something like that.</p> <p>19 Q. The policy that was attached to the</p> <p>20 complaint in this case had an effective period of</p> <p>21 June 1st of '06 to June 1st of '07, reinsured five</p> <p>22 years prior to that period, or is that in the</p> <p>23 middle of the period?</p> <p>24 A. Probably in '03 or '04. It was a June</p>
Page 83	Page 85
<p>1 claims? Absolutely.</p> <p>2 Q. That's strictly on an insurer-by-insurer</p> <p>3 basis?</p> <p>4 A. By a contract by contract. Some of our</p> <p>5 insureds have million dollar deductibles, and we</p> <p>6 become the administrators of all claims under</p> <p>7 \$50,000, and we have a reporting procedure of</p> <p>8 anything over \$50,000. Others have higher</p> <p>9 thresholds or lowered thresholds. Some of our</p> <p>10 companies in the past have given us draft</p> <p>11 authority. Some we have checks right here, and we</p> <p>12 will handle day-to-day claims and report back.</p> <p>13 Eventually they will come in and take a look at</p> <p>14 where we are at.</p> <p>15 Q. One of the things you mentioned earlier</p> <p>16 was the fact that you didn't receive an insurance</p> <p>17 policy from American Automobile until I think</p> <p>18 Kathleen Detrick got a copy of it for you?</p> <p>19 A. Correct.</p> <p>20 Q. How did you enroll in the program with</p> <p>21 American Automobile?</p> <p>22 A. Through the computer.</p> <p>23 Q. I assume a feature of the computer did</p> <p>24 not allow you to print off a copy of the policy?</p>	<p>1 inception and expiration date on that policy. I</p> <p>2 have held it in place for years.</p> <p>3 Q. Do you recall when you terminated your</p> <p>4 relationship with American Automobile?</p> <p>5 A. I have never terminated it.</p> <p>6 Q. So you're still with American</p> <p>7 Automobile?</p> <p>8 A. Of course I am.</p> <p>9 Q. You have a policy now, a copy of the</p> <p>10 policy, right?</p> <p>11 A. Now they give policies.</p> <p>12 Q. When did they start giving policies?</p> <p>13 A. After I asked for them, after my</p> <p>14 attorney asked for them.</p> <p>15 Q. Do they mail you one annually?</p> <p>16 A. No.</p> <p>17 Q. How do you get it?</p> <p>18 A. You have to get it off the computer.</p> <p>19 Q. But that future was not available to you</p> <p>20 back in 2006?</p> <p>21 A. No.</p> <p>22 MR. RICE: I don't have any further</p> <p>23 questions.</p> <p>24 MR. SCOLARO: I have got a couple</p>

22 (Pages 82 to 85)

Page 86	Page 88
<p>1 things; but, Bob, do you have anything?</p> <p>2 MR. GORBOLD: Give me just a second,</p> <p>3 please.</p> <p>4 MR. SCOLARO: Sure.</p> <p>5 MR. GORBOLD: No. I have nothing.</p> <p>6 MR. SCOLARO: I have a few questions.</p> <p>7 CROSS EXAMINATION</p> <p>8 BY MR. SCOLARO:</p> <p>9 Q. Brian, Dana asked a question regarding</p> <p>10 the A rating of RCA, and he went on to ask how</p> <p>11 often you check the rating. Is it fair to say</p> <p>12 that it's customary practice in the insurance</p> <p>13 broker agency business to check the rating of a</p> <p>14 carrier prior to placing coverage with them?</p> <p>15 A. On an annual basis ratings change.</p> <p>16 Typically on an annual basis you'll take a look</p> <p>17 one time a year, but here when companies let --</p> <p>18 when they have been downgraded from an A to B plus</p> <p>19 and so, you know, it's not a typical practice</p> <p>20 where agents sit down and say look. When you're</p> <p>21 selling a program like the AEG program, you're</p> <p>22 forced to look at that a little bit more often</p> <p>23 because you're printing it off the computer</p> <p>24 system. That's why I said when our insureds would</p>	<p>1 might first start having claims and you</p> <p>2 mentioned -- you stated that was right around the</p> <p>3 time that the investigator -- I think his name</p> <p>4 is -- I don't actually recall what his name is.</p> <p>5 A. Norm Cofed (phonetic).</p> <p>6 Q. It was right around the time that Cofed</p> <p>7 had come in here, is that not correct?</p> <p>8 A. It was sometime after that, yes.</p> <p>9 Q. Would it be fair to say that you</p> <p>10 notified AAIC as soon as practical?</p> <p>11 MR. RICE: Objection. Calls for a</p> <p>12 legal conclusion, but you can answer if you</p> <p>13 understand what the question is.</p> <p>14 THE WITNESS: I contacted them as soon</p> <p>15 as I knew there was an exposure, a potential</p> <p>16 exposure, that could or may turn into a claim or</p> <p>17 may not.</p> <p>18 BY MR. SCOLARO:</p> <p>19 Q. Give me a second, please.</p> <p>20 With respect to Dallas National, you</p> <p>21 mention that you took clients who had previously</p> <p>22 been in the AEG with AEG and you had moved them to</p> <p>23 Dallas National, is that correct?</p> <p>24 A. Correct.</p>
Page 87	Page 89
<p>1 ask because they want to know what it's rated.</p> <p>2 In addition, I contacted Eddie McCreety and asked</p> <p>3 her what the rating was.</p> <p>4 Q. Dana talked about claims being paid, how</p> <p>5 those payments were made. You mentioned McClure &</p> <p>6 Ciarrachi, how we sort of termed it, funnel</p> <p>7 account. Part of that funnel account is paid</p> <p>8 into by B.D. McClure & Associates, isn't that</p> <p>9 correct?</p> <p>10 A. The majority of all money in that funnel</p> <p>11 account comes from McClure & Associates.</p> <p>12 Q. Is it not fair to say that when clients</p> <p>13 called with claims, were they threatening to take</p> <p>14 legal action against one of the entities here?</p> <p>15 A. Everyone said if we didn't pay those</p> <p>16 claims, they were going to sue McClure &</p> <p>17 Associates because we are the broker.</p> <p>18 Q. It was McClure & Associates specifically</p> <p>19 that those clients were threatening to sue?</p> <p>20 A. That's who they purchased the insurance</p> <p>21 from.</p> <p>22 Q. You said that the day --</p> <p>23 We talked about when notification was</p> <p>24 made to AAIC with respect to the fact that they</p>	<p>1 Q. Was it your opinion that in doing so</p> <p>2 that you have mitigated damages to the extent that</p> <p>3 they were owed to -- they were incurred by</p> <p>4 McClure & Associates?</p> <p>5 A. Absolutely. If I didn't move and get a</p> <p>6 carrier and get them that quickly, the exposure</p> <p>7 would continue to grow, and Dallas started</p> <p>8 collecting claims, starting coming in a day or two</p> <p>9 after they took over.</p> <p>10 MR. SCOLARO: Did we enter a copy of the</p> <p>11 policy as an exhibit?</p> <p>12 MR. RICE: We did not.</p> <p>13 BY MR. SCOLARO:</p> <p>14 Q. I only have three copies of this so,</p> <p>15 Bob, you might be short on one.</p> <p>16 Brian, could you just turn to the</p> <p>17 back. I think this would be page -- what is</p> <p>18 marked at the top as Page 28 of 31.</p> <p>19 A. Okay.</p> <p>20 Q. I am going to read this and just tell me</p> <p>21 if I am reading this correctly as you see it here.</p> <p>22 "Consideration premium charge is hereby agreed and</p> <p>23 understood that Section 4: Definitions, I,</p> <p>24 professional services is amended to include the</p>

23 (Pages 86 to 89)

Page 90	Page 92
<p>1 following: Sale of professional employer 2 organization plans including the sale and 3 placement of insurance products within the plan 4 but excluding the administration or servicing of 5 any PEO plan? 6 A. Yes. That's correct. 7 Q. Is it your understanding that AEG falls 8 into that definition of a PEO plan? 9 A. Yes. 10 MR. SCOLARO: I think I'm done. I just 11 want to be sure. Yeah, I'm done. 12 MR. RICE: I just have one quick 13 follow-up. 14 REDIRECT EXAMINATION 15 BY MR. RICE: 16 Q. Your attorney had asked you a couple of 17 questions about claimants that may contact 18 McClure, and the concern you had which was that 19 they would sue you if you didn't resolve this 20 problem. Do you remember that question? 21 A. Yes. 22 Q. Did any of those claimant's clients ever 23 have attorneys contact you directly? 24 A. Yes.</p>	<p>1 BY MR. GORBOLD: 2 Q. Mr. McClure, are you aware that as a 3 result of the Ramirez claim there was a collection 4 action filed in Florida against Mr. Sippel 5 personally? 6 A. Yes. 7 Q. Are you aware that as a result of the 8 Ramirez claim that the payroll accounts for Genie 9 Temporary Services and JES were garnished? 10 A. Yes. 11 Q. You had submitted that claim to AAIC for 12 help in mitigating that loss? 13 A. Yes, I did. 14 Q. They had refused to cover it? 15 A. Yes. 16 MR. GORBOLD: That's all I have. 17 RECROSS EXAMINATION 18 BY MR. SCOLARO: 19 Q. I have one more question then. Is it 20 fair to say then, Brian, that AAIC never issued a 21 determination; despite all of your correspondence 22 with them, they never issued a determination with 23 respect to denying of coverage or acceptance of 24 coverage on this?</p>
Page 91	Page 93
<p>1 Q. Aside from Genie's attorney have any 2 other attorneys representing clients or former 3 clients of McClure ever contacted you relating to 4 claims involving AEG insurance? 5 A. Yes. 6 Q. How many would you say? 7 A. Three or four. 8 Q. Have any of those attorneys and/or 9 claimants filed suit against McClure? 10 A. No, because we mitigated the damages. 11 Q. Did any of those attorneys when they 12 were shifting the claims on behalf of their 13 clients and your clients ever send you copies of 14 complaints saying we would file this if we don't 15 get a response within a certain amount of time? 16 A. It was verbal. 17 Q. You never received any follow-up letters 18 from any of them either? 19 A. We took care of the problems. 20 MR. RICE: I have no further questions. 21 MR. SCOLARO: I don't either. 22 Reserved signature. 23 MR. GORBOLD: I do have a question. 24 CROSS EXAMINATION</p>	<p>1 A. Yes. 2 Q. They didn't do so for quite some time? 3 A. Years. 4 Q. And then would you say that the first 5 actual -- I guess you could call it a quasi 6 determination by them was them filing suit? 7 A. Yes. 8 MR. SCOLARO: That's all I have. 9 (WHEREUPON, said documents were 10 marked McClure Deposition Exhibit 11 Nos. 1-5, for ID, as of 2/16/10.) 12 * * * * 13 14 15 16 17 18 19 20 21 22 23 24</p>

24 (Pages 90 to 93)

Page 94

1 CERTIFICATE
2 OF
3 CERTIFIED SHORTHAND REPORTER
4

5 I, THERESE M. SONNEMAKER, a Certified
6 Shorthand Reporter of the State of Illinois, CSR
7 License No. 84-2414, do hereby certify:

8 That previous to the commencement of
9 the examination of the aforesaid witness, the
10 witness was duly sworn by me to testify the whole
11 truth concerning the matters herein;

12 That the foregoing deposition
13 transcript was stenographically reported by me and
14 was thereafter reduced to typewriting under my
15 personal direction and constitutes a true and
16 accurate record of the testimony given and the
17 proceedings had at the aforesaid deposition;

18 That the said deposition was taken
19 before me at the time and place specified;

20 That I am not a relative or employee or
21 attorney or counsel for any of the parties herein,
22 nor a relative or employee of such attorney or
23 counsel for any of the parties hereto, nor am I
24 interested directly or indirectly in the outcome

Page 95

1 of this action.

2 IN WITNESS WHEREOF, I do hereunto set
3 my hand at Chicago, Illinois, this 27th day of
4 August, 2010.

5
6
7
8 _____
9 THERESE M. SONNEMAKER, CSR
10 CSR License No. 84-2414
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 (Pages 94 to 95)